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All submitted together

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~192.~~ ~~26~~ ~~26~~ 1

THE UNITED STATES, PLAINTIFFS,

vs.

MURRAY STANLEY.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED OCTOBER 6, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 192.

THE UNITED STATES, PLAINTIFFS,

vs.

MURRAY STANLEY.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

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1 *Indictment for denying equal privileges of an inn to a person of color.*

In the circuit court of the United States for the district of Kansas.

THE UNITED STATES
vs.
MURRAY STANLEY. } No. 1568.

Be it remembered that on this day, to wit, May 8, 1876, the clerk of the district court of the United States for the district of Kansas filed in the clerk's office of the circuit court of the United States for the district of Kansas copy of order remitting case to circuit court, indictment, & demurrer in said entitled action, which said copy of order, indictment, & demurrer are in the words and figures following, to wit:

Copy of order remitting case case *to circuit* case *court.*

At a term of the district court of the United States for the district of Kansas, begun and held at Topeka, in said district, on the 10th day of April, A. D. 1867, the following proceedings, among others, were had, and appear of record, in the words and figures following, to wit:

THE UNITED STATES
vs.
MURRAY STANLEY. } 1578.

FRIDAY, *April* 28, 1876.

On motion of Geo. R. Peck, U. S. attorney, he deeming it necessary, and with the consent of the defendant, it is ordered by the court that the indictment now pending in this court in the above-entitled case be, and the same is hereby, remitted to the circuit court of the United States for the district of Kansas for trial, and that the clerk of this court shall transfer to said circuit court all process, papers, and proceedings in this court in said case.

In testimony whereof I hereunto set my hand and affix the seal
2 of said court, at Topeka, in said district, this 8th day of May, A. D. 1876.

[SEAL.]

J. C. WILSON,
Clerk of District Court said District.

(Endorsed:) Circuit court, No. 1568. Dist. c't, No. 1578. The United States vs. Murray Stanley. Copy order remitting case to circuit court. Clerk's costs in dist. c't $3.25. Filed May 8, 1876. A. S. Thomas, clerk.

Indictment.

THE UNITED STATES OF AMERICA,
District of Kansas, ss:

In the district court of the said United States in and for the said district. April term, 1876.

THE UNITED STATES OF AMERICA
vs.
MURRAY STANLEY.

Indictment for denying equal privileges of an inn to a person of color.

At the term of the district court of the United States of America, in

and for the said district of Kansas, begun and held at Topeka, in said district, on the 10th day of April, in the year of our Lord one thousand eight hundred and seventy-six, the grand jurors of the United States of America, duly empan'eled, sworn, and charged to enquire of offences committed within the district of Kansas, upon their oaths do find and present that one Murray Stanley, late of the district of Kansas aforesaid, on the tenth day of October, in the year of our Lord one thousand eight hundred and seventy-five, at the district of Kansas aforesaid, and within the jurisdiction of this court, being then and there in charge and having the management and control of a certain inn, did then and there unlawfully deny to one Bird Gee, then and there a citizen of the State of Kansas and of the United States of America, full and equal enjoyment of the accom'odations, advantages, facili-
3 ties, and privileges of said inn, by then and there denying to said Bird Gee the privilege of then and there partaking of a meal, to wit, of a supper, at the table of said inn, for such purpose then and there provided, he, the said Murray Stanley, having then and there so as aforesaid denied to said Bird Gee the aforesaid full and equal enjoyment of the accom'odations, advantages, facilities, and privileges of said inn, for the reason that he, the said Bird Gee, was then and there a person of color and of the African race, and for no other reason whatever, contrary to the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

GEO. R. PECK,
United States Attorney for the District of Kansas.

(Endorsed:) No. 1578. The United States vs. Murray Stanley. Denying equal privileges of an inn to a person of color. A true bill. James Burgess, foreman. Witnesses, Bird Gee, E. C. Backenstoce, Jule Murgotroyd, E. Unkerfer. Filed Ap'l 25, 1876. J. C. Wilson, clerk. Bond, $500. Circ't c't. No. 1568. Filed May 8, 1876. A. S. Thomas, clerk.

Demurrer.

In the district court of the United States for the district of Kansas.

THE UNITED STATES OF AMERICA }
vs. }
MURRAY STANLEY. }

Demurrer.

And now comes said defendant, by Clemens & Rossington, his attorneys, and demurs to the indictment found herein, because the
4 act of Congress under which said indictment is laid is in conflict with and unauthorized by the Constitution of the United States, and is void.

CLEMENS & ROSSINGTON,
Attorneys for Defendant.

(Endorsed:) Circ't c't. No. 1568. U. S. vs. Murray Stanley. Demurrer. Filed April 27, '76. J. C. Wilson, clerk. Filed May 8, 1876. A. S. Thomas, clerk.

And on this day, to wit, Friday, June 16, 1876, in the June term, 1876, of said court, in the record of the proceedings thereof in said entitled action is the following entry, to wit:

Certificate of division.

THE UNITED STATES OF AMERICA
vs.
MURRAY STANLEY. } 1568.

Now comes Geo. R. Peck, U. S. attorney, and also comes G. C. Clemens, attorney for defendant herein, and thereupon this action came on for hearing upon the demurrer interposed by the defendant to the indictment herein, and on the hearing thereof the Hon. John F. Dillon and the Hon. C. G. Foster, being the judges holding this court, were divided in opinion upon certain points raised by said demurrer, and it appearing to the said judges that no further proceedings could be had in said case by reason of said division of opinion without prejudice to the merits, further proceedings herein were suspended, and thereupon counsel for both parties having requested the court that the said points upon which the judges disagreed should be stated under the direction of the said judges, and be certified under the seal of this court to the Supreme Court of the United States at its next session, the said court so ordered and directed. And thereupon was filed a certificate of division herein, in the words and figures following, to wit:

5 IN THE MATTER OF THE UNITED STATES
of America
vs.
MURRAY STANLEY.

Be it remembered that on the 25th day of April, A. D. 1876, there was filed in the district court of the United States for the district of Kansas a certain indictment, of which the following is a copy:

Indictment for denying equal privileges of an inn to a person of color.

UNITED STATES OF AMERICA,
District of Kansas, ss:

In the district court of the said United States in and for the said April term, 1876.

THE UNITED STATES OF AMERICA
vs.
MURRAY STANLEY.

At the term of the district court of the United States of America in and for the said district of Kansas, begun and held at Topeka, in said district, on the 10th day of April, in the year of our Lord one thousand eight hundred and seventy-six, the grand jurors of the United States of America duly empanelled, sworn, and charged to enquire of offences committed within the district of Kansas, upon their oaths do find and present that one Murray Stanley, late of the district of Kansas aforesaid, on the tenth day of October, in the year of our Lord one thousand eight hundred and seventy-five, at the district of Kansas aforesaid, and within the jurisdiction of this court, being then and there in charge, and having management and control of a certain inn, did then and there unlawfully deny to one Bird Gee, then and there a citizen of the State of Kansas and of the United States of America, full and

equal enjoyment of the accom'odations, advantages, facilities,
6 and privileges of said inn, by then and there denying to said Bird Gee the privileges of then and there partaking of a meal, to wit, of a supper, at the table of said inn, for such purpose then and there provided, he, the said Murray Stanley, having then and there so as aforesaid denied to said Bird Gee the aforesaid full and equal enjoyment of the accom'odations, advantages, facilities, and privileges of said inn, for the reason that he, the said Bird Gee, was then and there a person of color and of the African race, and for no other reason whatever, contrary to the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

GEORGE R. PECK,
United States Attorney for the District of Kansas.

That the said defendant, Murray Stanley, was arrested thereunder, and on the 27th day of April, 1876, appeared in said court, and filed a certain demurrer to said indictment, of which demurrer the following is a copy:

Demurrer.

In the district court of the United States for the district of Kansas.

THE UNITED STATES OF AMERICA)
vs.)
MURRAY STANLEY.)

And now comes said defendant, by Clemens & Rossington, his attorneys, and demurs to the indictment found herein, because the act of Congress under which said indictment is laid is in conflict with and unauthorized by the Constitution of the United States, and is void.

CLEMENS & ROSSINGTON,
Attorneys for Defendants.

That on the 28th day of April, A. D. 1876, said indictment was
7 remitted to this court by the said district court. That at the June term of the circuit court of the United States for the district of Kansas, begun and held on the 5th day of June, A. D. 1876, at Leavenworth, in said district, this case came on for hearing before the said circuit court upon said demurrer. That on the hearing thereof we, the judges holding said court, were divided in opinion upon the following points raised by said demurrer:

1st. Does the indictment state an offense punishable by the laws of the United States or cognizable by the Federal courts?

2d. Is the act of Congress entitled "An act to protect all citizens in their civil and legal rights," approved March 1st, 1875, constitutional?

And that during the same term the counsel for both parties requested that the said points upon which the said judges disagreed should be stated under the direction of the said judges, and be certified under the seal of said court to the Supreme Court of the United States at its next session; and it appearing to the said judges that no further proceedings could be had in said case without prejudice to the merits, further proceedings therein were suspended until the Supreme Court of the United States should decide said questions.

Judges' certificate.

We do hereby certify that we were divided in opinion, as above stated, upon the points above stated arising upon the hearing of said demurrer, and that upon the request of counsel for both parties the foregoing statement was made under our direction, to be certified under the seal of the court to the Supreme Court of the United States at its next session.

JOHN F. DILLON.
C. G. FOSTER.

8 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy of the record of all the proceedings in the action of the United States vs. Murray Stanley, No. 1568, in said circuit court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this third day of October, A. D. 1876.

[SEAL.] A. S. THOMAS, *Clerk.*

(Indorsed:) No. 1568. United States of America vs. Murray Stanley. Copy of the record of all the proceedings.

(Indorsement on cover:) No. 192. The United States, plaintiffs, vs. Murray Stanley. Kansas C. C. U. S. Filed 6th October, 1876.